

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:02CR194
)	
Plaintiff,)	
)	ORDER
vs.)	
)	
JUAN MEDINA-ALVAREZ,)	
)	
Defendant.)	

This matter is before the Court on the following: 1) the Defendant's Notice of Appeal (Filing No. 112)¹ from the Memorandum and Order (Filing No. 110) denying his Motion for Reconsideration of the Court's previous Memorandum and Order denying his motion to vacate filed pursuant to 28 U.S.C. § 2255; and the Defendant's motion for release of his sentencing transcript (Filing No. 111). The Defendant had retained counsel in this Court, and he has not moved for leave to proceed in forma pauperis on appeal. The Court has not received an appeal fee or an inmate trust account statement. (Filing No. 113).

Before the defendant may appeal the denial of his § 2255 motion, a "Certificate of Appealability" must issue. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), the right to appeal the denial of a § 2255 motion is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

....
(B) the final order in a proceeding under section 2255.

¹The Notice of Appeal is considered as a request for a certificate of appealability.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a federal right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.””² *Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 894 (1983) (defining the former standard for a certificate of probable cause to appeal)). “Where a district court has rejected the constitutional claims on the merits,² the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484.

For the reasons set forth in the Court’s Memorandum and Order denying the defendant’s § 2255 motion (Filing No. 106), the Court concludes that the Defendant has neither made a substantial showing of the denial of a constitutional right or that jurists of reason would find the Court’s procedural ruling debatable, as required by 28 U.S.C. §

²In contrast, if the district court denies a § 2255 motion on procedural grounds without reaching the underlying constitutional claims on the merits, a certificate of appealability should issue under 28 U.S.C. § 2253(c) when the defendant shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and would find it debatable whether the district court was correct in its procedural ruling.

2253(c). In its previous Order, the Court concluded that the § 2255 motion was untimely filed. The Court will deny the request for a certificate of appealability.

Regarding the request for his sentencing transcript, any request for a transcript must be addressed directly to the court reporter, Ms. Brenda Fauber, 111 S. 18th Plaza, Room 3129, Omaha, NE 68102. The motion (Filing No. 111) will be denied.

IT IS ORDERED:

1. The Defendant's request for a certificate of appealability (Filing No. 112) is denied;
2. The Defendant's motion for release of a sentencing transcript is denied; and
3. The Clerk of the Court shall provide a copy of this Order to the Eighth Circuit Court of Appeals.

DATED this 5th day of May, 2005.

BY THE COURT:

s/Laurie Smith Camp
Laurie Smith Camp
United States District Judge